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CASE NO.

JUDGE

Proper application having been made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9601-9675, for an administrative warrant to complete a time-critical removal action to abate an imminent and substantial endangerment to human health and the environment at and from the property located at 1772 Oakwood Avenue (a/k/a 1820 Clinton Street), Toledo, Lucas County, Ohio (“B & R Custom Chrome Property” or “Property”), this Court finds that the United States has established reasonable grounds for issuance of an administrative warrant to authorize representatives of the United States Environmental Protection Agency (“EPA”), including contractors and representatives authorized by EPA, to enter to complete response actions as required and necessary pursuant to Sections 104(a) and (e) of CERCLA, 42 U.S.C. §§ 9604(a), (e). The materials supporting the United States’ Application for *Ex Parte* Administrative Warrant

(“Application”) consist of the Memorandum in Support of the Application and all exhibits attached thereto, including the affidavit of EPA On-Scene Coordinator Jon J. Gulch.

The supporting materials submitted to this Court establish that EPA has determined that a CERCLA time-critical removal action is needed at the B & R Custom Chrome Property based on reasonable evidence that there may be a release or threat of release of one or more hazardous substances that present a threat or potential threat to human health or the environment. The Property is located in an urban area (mixed industrial and residential). The Property is occupied by a former manufacturing building approximately 71,470 square feet in area. The westernmost portion of the former manufacturing building is fire-damaged and partially demolished. The fire-damaged portion of the former manufacturing building is approximately 17,700 square feet in area and is secured by a temporary chain-link fence installed by EPA along the western perimeter. The nearest residence is located approximately 125 feet southwest of the Property.

On June 13, 2012, EPA conducted a removal Site Assessment, including sampling and investigation activities, at the Property pursuant to a short-term warrant for access obtained by the City of Toledo to assess potential dangers caused by a fire on May 16, 2012. Hazardous or unknown wastes were documented in 52 drums, three above-ground tanks (ASTs), one underground storage tank (UST), one vat and numerous small containers inside the former manufacturing building at the Property. Analytical results from the samples obtained during the Site Assessment revealed the presence of elevated concentrations of hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including corrosive characteristic hazardous waste with a pH less than 2, and toxicity characteristic cadmium, chromium, lead, benzene, tetrachloroethene, and trichloroethene.

Many of the containers were in poor or distressed condition and exposed to the elements from the damaged and deteriorating conditions of the former manufacturing building. Several sections of roof and outer walls of that building are damaged. Weather conditions may infiltrate the building and potentially further degrade waste containers or increase the likelihood of off-site migration of hazardous wastes. Thus, there is a high risk of release due to the deteriorated conditions of the containers and the building, unrestricted site access, and the threat of fire. Uncontrolled waste at the Property could be released to nearby soil and groundwater, the atmosphere, and the City of Toledo's public storm water sewer system.

The State of Ohio is the current owner of record of the Property following a tax forfeiture on March 5, 2013. The United States subsequently contacted the Ohio State Attorney General's Office, Environmental Enforcement Section, to request access to the Property by EPA to perform the selected removal action. Although the State of Ohio declined to voluntarily provide access, the State does not contest this Court issuing an administrative warrant to EPA providing 90-days access to the Property for purposes of conducting a removal action.

Entry is needed to the Property to perform various actions necessary for the completion of a time-critical removal action at the Property as outlined in the Affidavit of Jon J. Gulch and the Action Memorandum. These activities are necessary to abate a potential imminent and substantial endangerment to human health and the environment. Specifically, EPA seeks access to perform the following actions to mitigate threats posed by the presence of hazardous substances at the Property:

- a. Develop and implement a Site Health and Safety Plan;
- b. Develop and implement a Work Plan;
- c. Secure, characterize, remove, and properly dispose of the drums, containerized wastes, spilled waste materials, associated contaminated

soil, and hazardous debris located at the Site in accordance with EPA's Off-Site Rule (40 CFR § 300.440).

- d. Take any other response actions to address any release or threatened release of a hazardous substance, pollutant or contaminant that EPA determines may pose an imminent and substantial endangerment to the public health or the environment.

In order to fully characterize the nature and extent of contamination, EPA states that it may use various types of equipment, including a hand auger, geoprobe, and geophysical equipment. EPA believes it may be necessary or convenient to leave some of the equipment at the Property while the response actions are ongoing. It may also be necessary and desirable to take photographs of portions of the Property and of the completion of the time-critical removal. All of these actions are typical of actions taken by EPA under the authority of CERCLA. Additionally, while the Property appears to have been abandoned and EPA does not anticipate the time-critical removal will interfere with anyone's enjoyment of the premises, EPA has communicated its intention to conduct the response action to the State of Ohio, the owner of record.

EPA currently estimates that it will require 15 on-site working days (excluding weekends) to complete the time-critical removal. To account for any unexpected delays, including delays caused by inclement weather or unforeseen site conditions, EPA has requested 90 days of access to the Property.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Section 104(a) and (e) of CERCLA, EPA and its duly designated representatives, including contractors and representatives authorized by EPA, are hereby entitled to and are hereby permitted to enter upon the B & R Custom Chrome Property for the purpose of completing the time-critical removal action described above and in the Action Memorandum dated August 13, 2012 (attached as Ex. 3 to the

Memorandum in Support of Application for *Ex Parte* Administrative Warrant). As part of the response actions, employees of EPA, including contractors and representatives authorized by EPA, are permitted to enter and to re-enter the Property in order to effectuate and complete the response actions as the EPA deems necessary. EPA is authorized to destroy any portions of buildings on the Property that are considered unsafe. EPA is authorized to remove fixtures on the Property pursuant to this warrant as necessary to abate the release or threatened release of hazardous substances, pollutants, and/or contaminants. If EPA excavates areas of the Property or otherwise significantly alters the Property, EPA shall re-grade the land and otherwise attempt to return the Property to its prior condition at the time immediately prior to effectuating the time-critical removal.

The entry and effectuation of the response actions shall be conducted within reasonable limits and in a reasonable manner between the hours of 7:00 a.m. and 7:00 p.m., shall commence on September 23, 2013, and shall continue for the number of days that are reasonably necessary for EPA to complete the response process. Entry shall be completed within 90 days from the date that this warrant is issued. EPA may request another warrant or an extension of this warrant to complete the removal activities in the event that inclement weather conditions or other good cause prohibit it from completing the removal activities within 90 days.

A copy of this warrant shall be left at the Property at the time the response actions commence. A copy shall also be delivered to all persons from whom EPA has sought consent for access, including the State of Ohio.

The United States Marshal is hereby authorized and directed to assist representatives of EPA in such manner as reasonably may be necessary and required to execute this Warrant and the provisions contained herein.

DATED THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2013. at 10:37 am

  
UNITED STATES MAGISTRATE JUDGE